

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter Of                                  | ) |                     |
|   | ) |                     |
| TracFone Wireless, Inc. Request for Clarification | ) | WC Docket No. 11-42 |
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**COMMENTS OF THE  
PUBLIC UTILITY DIVISION OF THE  
OKLAHOMA CORPORATION COMMISSION**

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) respectfully submits the following comments in connection with the Public Notice released February 16, 2017<sup>1</sup> seeking comments on the Request for Clarification (“Request”) by TracFone Wireless, Inc. (“TracFone”) concerning the Lifeline minimum service standards established in the *2016 Lifeline Modernization Order*.<sup>2</sup>

**I. Summary**

PUD recognizes that there is a significant limitation placed on a Lifeline consumer’s participation in the market when their selection of a Broadband Internet Access Service (“BIAS”) provider results in the “freezing” of their ability to change Lifeline service providers for twelve (12) months. While PUD understands the logic followed by the Federal Communications Commission (“FCC” or “Commission”) in allowing a freeze of a subscriber’s ability to port their BIAS Lifeline service benefit for such an extended period of time, any

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<sup>1</sup> Public Notice DA 17-174, rel. February 16, 2017.

<sup>2</sup> See, *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (released April 27, 2016)

indication that a subscriber may be receiving a lesser service than is called for under the minimum service standards must be given serious consideration and review. It is PUD's experience that regulatory diligence is often necessary to ensure that eligible Lifeline subscribers receive a level of service that is commensurate with the amount of universal service support received by the ETC.<sup>3</sup>

Accordingly, with the goals of ensuring that BIAS Lifeline customers are not provided substandard services or limited opportunities for access to such services and that the services supported by federal Lifeline dollars improve and empower the lives of eligible consumers in a meaningful way, PUD would urge the Commission to give ample consideration to both the technical characteristics and geographic availability of any "new," "innovative" or otherwise "non-standard" BIAS offerings. Further, even in the event the FCC finds that an alternative form of BIAS is consistent with the minimum service standards, to the extent there are any differentiating factors (e.g., availability, operation, technical characteristics) between the different forms of mobile BIAS, customers must be made aware of such factors so they can make an informed choice among such varying options prior to being locked in with a particular ETC for twelve (12) months.

## **II. Wi-Fi Service as BIAS**

PUD is not positioned to make a determination as to whether or not the "Premium Wi-Fi" service described by TracFone and Telrite Corporation d/b/a Life Wireless ("Telrite"), and

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<sup>3</sup> For instance, the Oklahoma Corporation Commission has established rules requiring wireless ETCs to provide at least an unlimited local voice service plan with the option to provide additional plans that have a minimum of 1,000 minutes of local voice service for subscribers on Tribal lands and, for subscribers on non-Tribal lands, the ETC must offer a minimum of 500 minutes of local voice service. See, OAC 165:55-23-11. Additionally, PUD, in a current rulemaking proceeding (RM 201700002) is proposing to delete these standards and, instead, rely on the FCC's minimum service standards at 47 C.F.R. § 54.408(b)(3).

offered by Telrite as BIAS to its Lifeline customers, is compliant with the FCC’s minimum service standards for mobile BIAS. However, PUD would note that the FCC’s minimum service standards for mobile BIAS, and subsequent updates thereto, rely on defined data sources with a focus on the Commission’s annual *Mobile Competition Report* and the FCC Form 477.<sup>4</sup> Both of these data sources, at least in some instances, specifically exclude consideration of Wi-Fi delivered services. For instance the FCC’s 2016 *Mobile Competition Report*<sup>5</sup>, where the discussion addresses the measurement of network coverage, specifically excluded Wi-Fi services.<sup>6</sup> Also, where the same report addressed the FCC Speed Test app relative to mobile data and speed measurement, the report clearly explained that tests in which the user was on a Wi-Fi network were “filtered out.”<sup>7</sup> Additionally, in Appendix VI: Non-Price Rivalry, Quality of Service, Tables VI.B.i through VI.B.iv, which discusses mobile data upload and download speeds, the FCC only included mobile observations in the analysis, and dropped all tests performed over Wi-Fi.<sup>8</sup>

Finally, the instructions for filing the FCC Form 477<sup>9</sup>, which the FCC will rely on for the mobile broadband minimum service standard for speed, specifically exclude “...providers of terrestrial wireless ‘hot spot’ services – whether offered for an occasional-use fee or offered free

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<sup>4</sup> See, Third Report and Order, Further Report and Order, and Order on Reconsideration (*Lifeline Modernization Order*) ¶ 92 “...after an initial schedule of minimum service standards, updated minimum service standards for mobile broadband data usage allowance will be based on calculation of a mobile data usage level using data set forth in the Commission’s annual *Mobile Competition Report* and other available data sources. For the mobile broadband minimum service standard for speed, we rely on Form 477 data while also incorporating industry mobile technology generation (i.e. 3G, 4G).”

<sup>5</sup> See, 2016 *Mobile Competition Report*, WT Docket No. 16-137, Nineteenth Report, released September 23, 2016.

<sup>6</sup> *Id.* at ¶ 33, fn 74 (“This excludes providers of terrestrial wireless ‘hot spot’ services, like local-area Wi-Fi or Wi-Fi within public places, but includes facilities-based network providers that provide resale of mobile services.”)

<sup>7</sup> *Id.* at ¶ 108, fn 335 (“Tests where the user was on a Wi-Fi network, or if it was a roaming observation, were filtered out.”)

<sup>8</sup> *Id.* at fn 430, (“All tests performed over Wi-Fi were dropped, and only mobile observations were included in the analysis.”)

<sup>9</sup> See, <https://transition.fcc.gov/form477/WhoMustFileForm477.pdf> (last visited March 1, 2017)

of charge – that only enable local distribution and sharing of a broadband connection within a residential or non-residential premises (for example, local area Wi-Fi or Wi-Fi within public places such as libraries, schools, parks, shopping malls, coffee shops, hotels, and airports).” Given that the FCC generally excluded Wi-Fi measurements from its *Mobile Competition Report*, and provides clear instruction to exclude “hot spot” Wi-Fi services when filing the FCC Form 477, PUD believes that Wi-Fi delivered BIAS would necessarily be excluded from the data upon which minimum service standards are to be established. Accordingly, in considering whether or not Wi-Fi delivered broadband access should be classified as BIAS, the FCC should ensure that such service is included in whatever metrics are used to establish minimum service standards.

Review of the description of the iPass<sup>10</sup> Wi-Fi service raises questions as well. First, the iPass Unlimited Service description<sup>11</sup> indicates that iPass “is the world’s largest commercial Wi-Fi network, with 50 million hotspots in airports, hotels, airplanes and public areas in more than 120 countries across the globe.” PUD believes the availability of the BIAS services is every bit as important as the quality and usage standards, which is consistent with the ETC designation process wherein designation is granted on a service area basis. PUD is concerned that the location of these Wi-Fi hot spots, which require close physical proximity to utilize, while perhaps great in number, are nonetheless limited to locations that may not be common areas in which Lifeline subscribers would find themselves trying to utilize their Lifeline supported BIAS. For instance, PUD performs field audits of the mobile marketing locations utilized by many wireless ETCs to enroll Lifeline subscribers and such ETCs are required to report all such mobile

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<sup>10</sup> iPass was identified as the provider of “Premium WiFi” service in the Attachment to the TracFone ex parte presentation filed with the Commission, dated January 18, 2017. Additionally, Telrite, in its Ex Parte presentation filed with the Commission on January 27, 2017, describes its Premium Wi-Fi as being provided “through the resale of iPass’s nationwide network of over 34 million broadband access points.”

<sup>11</sup> See, <https://www.ipass.com/document/ipass-service-description/> (last visited March 1, 2017)

marketing locations to PUD. These marketing locations tend to follow areas where Lifeline eligible subscribers are known to frequent. PUD has seen no instance of a mobile marketing location being established at an airport, airplane or hotel (PUD is aware of a single temporary marketing location at a motel but the availability of Wi-Fi was not apparent). Further, the lack of detail as to the characteristics of the “public areas” in which the accessible Wi-Fi hot spots are located, makes it impossible to assess how available or otherwise useful these might be to Lifeline subscribers.<sup>12</sup> The FCC, in considering whether Wi-Fi is to be accepted as a method of delivering BIAS, should consider the actual and practical availability of the Wi-Fi service. This is particularly important when the Lifeline subscriber compares this to cellular provisioned BIAS which, while also subject to some geographic limitations, end-users generally view as having a certain level of ubiquity when it comes to availability.

PUD also has questions with regard to the functionality of the Wi-Fi delivered BIAS. Does the Wi-Fi delivered BIAS allow a mobile Lifeline subscriber who is literally “on the move” to maintain a connection with an Internet endpoint when there is a switch between Wi-Fi hot spots? For instance, if a Lifeline subscriber is utilizing a navigation app on their smartphone to get to a job interview, can the navigation app function accurately and seamlessly for that trip without any need for access to cellular data? If not, such functional distinctions should be another point of consideration in the FCC’s review of this issue.

Accordingly, PUD would respectfully request that the FCC consider all issues surrounding the impact of Wi-Fi based BIAS, including but not limited to, how it complies with the FCC’s minimum service standards and calculations; whether there are any limitations on the

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<sup>12</sup> For instance, do such public areas include the various homeless shelters and other institutions that deliver support and aid to those in need?

availability of Wi-Fi based BIAS; and whether there are any functional shortcomings that may be present with the use of Wi-Fi technology to deliver BIAS.

## **II. Port Freeze and BIAS Innovation / Benefits**

Telrite alleges that its Premium Wi-Fi service, in addition to satisfying the BIAS standards, is made possible due to the twelve (12) month benefit port freeze that has been implemented for subscribers and is consistent with the goal “to incentivize additional investment in innovative services, such as Premium Wi-Fi.”<sup>13</sup>

While PUD agrees that the FCC has an expectation that the twelve (12) month benefit port freeze will enhance investment in broadband, PUD suggests that the FCC needs to consider whether or not the Wi-Fi delivered BIAS described by Telrite is consistent with those expectations. The FCC, in the *2016 Lifeline Modernization Order*, described several investment and service improvement incentive goals relative to the benefit port freeze:

- *To further incentivize investment in high-quality [sic] Lifeline service offerings, we implement Lifeline benefit port freezes – of 12 months for data services and 60 days for voice services- that will give providers greater certainty when planning new or updated Lifeline offerings. (¶ 385)*
- *To facilitate market entry for Lifeline-supported BIAS offerings, provide additional consumer benefits, and encourage competition, ... (footnote omitted)(¶ 389)*
- *We find that allowing broadband providers the security of a longer term relationship with subscribers will incentivize greater up-front investments from providers. Those investments in broadband-capable devices and broadband services should improve the quality of new offers for subscribers and further spur competition among providers to offer more innovative services. (¶ 389)*
- *...we find that Lifeline-eligible consumers will nonetheless benefit more from a Lifeline market in which a benefit port freeze gives providers stronger incentive to vigorously compete for eligible customers through better broadband service offerings and outreach.(¶ 389)*

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<sup>13</sup> See, Letter from John J. Heitmann, Counsel for Telrite Corporation d/b/a Life Wireless, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 09-197, 10-90 (January 27, 2017)

- *Similarly, we expect that the consumer benefits and service improvements resulting from increased competition in the Lifeline program will outweigh any potential consumer harms that could result from a provider knowing that a customer could not transfer her Lifeline benefit to a different provider before the end of the port freeze.* (¶ 389, fn 970)

The FCC traded a significant consumer burden, the twelve (12) month benefit port freeze, for improvements in the services available to subscribers, and investment in the networks and facilities that deliver those services. In order to ensure that consumers do not get short changed in this bargain, the FCC must examine how the Wi-Fi delivered BIAS stacks up against these goals. For instance, iPass, in its whitepaper *Wi-Fi Monetization and Roaming Strategies for MVNOs*:<sup>14</sup>, under the heading “Reduce network costs by offloading data” indicates that iPass “allows you to implement a Wi-Fi First offload solution, whether your subscribers are on a home network or roaming on another. This solution lets you reduce wholesale costs and regain operational margin.” Is a data offload solution an acceptable substitute for mobile BIAS as the FCC has defined such service? Setting the functionality questions aside, to the extent MVNOs offering the iPass service enjoy improved operational margins, are those new-found dollars used for purposes that adequately benefit the Lifeline consumers that have been required to forego their ability to change providers for twelve (12) months at a time? Is this consistent with the FCC’s intentions when it bargained away the Lifeline consumer’s ability to change providers in the same manner as non-Lifeline consumers?

### **III. Consumers Must Be Provided Adequate and Effective Information**

The Oklahoma Corporation Commission, in adopting rules under which wireless ETCs in Oklahoma operate, has consistently worked to ensure that Lifeline consumers have adequate information available to know who their provider is, how they can get customer service, and

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<sup>14</sup> See, <https://www.ipass.com/document/solution-brief-wi-fi-monetization-and-the-mvno/> (last visited March 1, 2017)

what terms and conditions are applicable to their service. PUD believes the availability of such information is instrumental in ensuring that consumers can make informed choices among providers, select the services that best suit their needs, and, in short, get the best “bang for the federal buck.” PUD would note that this is of particular concern as, even with the FCC’s recent change to the boundaries that define Tribal lands in Oklahoma, a significant amount of Oklahoma is still defined as Tribal lands with eligible residents qualifying for the enhanced Lifeline support (\$34.25 per month per household). To put it simply, there are more federal Lifeline support dollars to invest towards providing opportunities and security (including closing the homework gap, being able to connect to jobs, family, and emergency services) via innovative BIAS services on behalf of low-income consumers in Oklahoma.

Accordingly, to the extent the FCC determines that Wi-Fi delivered BIAS is consistent with the minimum service standards and is otherwise eligible for Lifeline support, consumers must be made aware of any differences between Wi-Fi delivered BIAS and BIAS provided in conjunction with cellular data. It is critical that all such distinctions be disclosed to consumers in such a way that is clear, detailed, and understandable for all consumers. Without such disclosures, consumers of mobile BIAS may expect their service to function like cellular data. Should this occur without any transparency from the ETC, consumers will subject themselves to the twelve (12) month benefit port freeze only to find out after the fact that Wi-Fi delivered BIAS does not fit their needs. If the FCC accepts Wi-Fi delivered BIAS, it should require full disclosure of all differences between Wi-Fi and cellular data based BIAS. Further, the FCC should consider adding unsuitability of Wi-Fi delivered BIAS to the list of exceptions to the benefit port freeze.<sup>15</sup> This would ensure that a consumer could adequately recover from any

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<sup>15</sup> See, *Lifeline Modernization Order*, ¶ 393



misinformed or uninformed decisions, and also ensure that Lifeline dollars are utilized to their fullest extent in providing positive opportunities to eligible low-income consumers.

As an example of the challenges faced by consumers in receiving and acting on accurate and useful information about the Lifeline services they are trying to compare, PUD would note that the Oklahoma Corporation Commission added OAC 165:55-23-11(c)(3) to its rules. This rule requires “Any plan that is marketed as an unlimited plan that does not contain unlimited local voice minutes must be approved by the Director of the Public Utility Division.” This was implemented because wireless ETCs were in the marketplace advertising “unlimited” voice service as part of their Lifeline offerings. However, PUD’s Consumer Services Division consistently received complaints from Lifeline consumers indicating that they signed up for what they understood was unlimited voice service but, in some instances within days, experienced service interruptions because they had reached an artificial (and previously undisclosed) limit on the number of minutes they could utilize with their “unlimited” plan (in some cases as low as 1,500 voice minutes / month). PUD, in working with the wireless ETCs, did get processes changed so interruptions of unlimited services were only in conjunction with truly excessive use and any usage anomalies would be addressed on a case-by-case basis.

Another example would be within the description of Telrite’s Lifeline offering in Oklahoma.<sup>16</sup> Wireless ETCs in Oklahoma are required to maintain informational tariffs disclosing their terms and conditions for Lifeline services. The following is the description of the Lifeline services contained in Telrite’s Oklahoma Informational Tariff No. 1, 1<sup>st</sup> revised page No. 5, effective February 5, 2017.

#### 1.2.4 Wireless Lifeline Service Description and Rates

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<sup>16</sup> Telrite was granted ETC designation in Oklahoma in Cause No. PUD 201200143, Order No. 60800, dated March 12, 2013.

Telrite will offer one non-tribal Lifeline plan. This plan offers 500 voice minutes, unlimited text messaging 10 MB of data, unlimited data through its premium wi-fi partner and 25 MMS. Telrite will offer one tribal plan. The tribal plan offers unlimited voice minutes, unlimited texting and 1 GB of data. Both the tribal and nontribal plans will contain the nine FCC required services, a free wireless phone, and a nationwide calling scope which includes all 50 states, Puerto Rico and the US Virgin Islands.

However, upon review of the Telrite (Life Wireless) website<sup>17</sup>, PUD finds that, for Oklahoma, only one plan is disclosed, namely the Tribal plan contained in Telrite's Oklahoma informational tariff. Nowhere on the website is there information or discussion regarding what offering is available for those subscribers located on non-Tribal lands.<sup>18</sup> PUD expects that an eligible subscriber located on non-Tribal lands in Oklahoma, if attempting to enroll via the Telrite website and based on the information provided, would assume that they would be able to receive the Tribal plan (i.e., unlimited voice, 1 GB of data), but would ultimately learn, once they are deep into the enrollment process, that they only qualify for the service reduced non-Tribal plan. At this point some subscribers may decide it is too difficult to start the process over and accept the non-Tribal plan even though they were not able to do any reasonable comparison of other available non-Tribal plans as they thought they were enrolling in an unlimited voice, 1 GB of data service plan. If the consumer is not provided adequate information upfront, this could begin to feel like a bait and switch program.

## **VI. Conclusion**

PUD appreciates the opportunity to offer these comments and is hopeful the questions raised will assist in the consideration of the status of Wi-Fi delivered broadband service in the

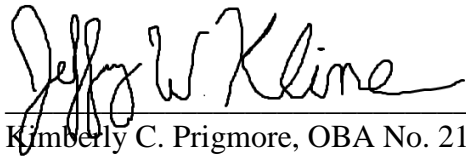
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<sup>17</sup> See, <https://www.lifewireless.com/main/plans> (last visited March 1, 2017)

<sup>18</sup> Telrite's service area for which it was granted ETC designation includes both Tribal and non-Tribal land areas.

context of the Lifeline supported BIAS standards as well as the FCC's overall goals for consumer benefits associated with BIAS.

Respectfully submitted,

A handwritten signature in black ink, reading "Jeff W. Kline". The signature is fluid and cursive, with the first name "Jeff" and last name "Kline" clearly legible. The middle initial "W." is smaller and less distinct. The signature is positioned above a horizontal line.

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